

Proposed technical correction:









SECTION #.(a) Subdivisions (1b) and (7) of G.S. 150B-2 are recodified as subdivisions (1a) and (5a) of G.S. 150B-2, respectively.

SECTION #.(b) G.S. 150B-2, as amended by subsection (a) of this section, reads as rewritten:

"§ 150B-2. Definitions.

As used in this Chapter, the following definitions apply:

- (1) ~~"Administrative law judge" means a~~ Administrative law judge. – A person appointed under G.S. 7A-752, 7A-753, or 7A-757.
- (1a) ~~"Adopt" means to Adopt.~~ To take final action to create, amend, or repeal a rule.
- ~~(1a)(1b)~~ "Agency" means an Agency. – An agency or an officer in the executive branch of the government of this ~~State and~~ State. The term includes the Council of State, the Governor's Office, a board, a commission, a department, a division, a council, and any other unit of government in the executive branch. A local unit of government is not an agency.
- (1c) ~~"Codifier of Rules" means the~~ Codifier of Rules. – The person appointed by the Chief Administrative Law Judge of the Office of Administrative Hearings pursuant to G.S. 7A-760(b).
- (1d) ~~"Commission" means the~~ Commission. – The Rules Review Commission.
- (2) ~~"Contested case" means an~~ Contested case. – An administrative proceeding pursuant to this Chapter to resolve a dispute between an agency and another person that involves the person's rights, duties, or privileges, including licensing or the levy of a monetary penalty. ~~"Contested case"~~ The term does not include rulemaking, declaratory rulings, or the award or denial of a scholarship, a grant, or a loan.
- (2a) Repealed by Session Laws 1991, c. 418, s. 3.
- (2b) ~~"Hearing officer" means a~~ Hearing officer. – A person or group of persons designated by an agency that is subject to Article 3A of this Chapter to preside in a contested case hearing conducted under that Article.
- (3) ~~"License" means any~~ License. – Any certificate, ~~permit~~ permit, or other evidence, by whatever name called, of a right or privilege to engage in any activity, except licenses issued under Chapter 20 and Subchapter I of Chapter 105 of the General Statutes, occupational licenses, and certifications of electronic poll books, ballot duplication systems, or voting systems under G.S. 163-165.7.
- (4) ~~"Licensing" means any~~ Licensing. – Any administrative action issuing, failing to issue, suspending, or revoking a license or occupational license. "Licensing" The term does not include controversies over whether an examination was fair or whether the applicant passed the examination.
- (4a) ~~"Occupational license" means any~~ Occupational license. – Any certificate, permit, or other evidence, by whatever name called, of a right or privilege to engage in a profession, occupation, or field of endeavor that is issued by an occupational licensing agency.

-  (4b) ~~"Occupational licensing agency" means any Occupational licensing agency. – Any board, commission, committee committee, or other agency of the State of North Carolina which that is established for the primary purpose of regulating the entry of persons into, and/or or the conduct of persons within a particular profession, occupation occupation, or field of endeavor, and which that is authorized to issue and revoke licenses. "Occupational licensing agency" The term~~ does not include State agencies or departments ~~which that~~ may as only a part of their regular function issue permits or licenses.
-  (5) ~~"Party" means any Party. – Any person or agency named or admitted as a party or properly seeking as of right to be admitted as a party and includes the agency as appropriate.~~
-  (5a) ~~"Person" means any Person. – Any natural person, partnership, corporation, body politic politic, and any unincorporated association, organization, or society which that may sue or be sued under a common name.~~
-  (6) ~~"Person aggrieved" means any Person aggrieved. – Any person or group of persons of common interest directly or indirectly affected substantially in his his, her, or its person, property, or employment by an administrative decision.~~
-  (7a) ~~"Policy" means any Policy. – Any nonbinding interpretive statement within the delegated authority of an agency that merely defines, interprets, or explains the meaning of a statute or rule. The term includes any document issued by an agency which that is intended and used purely to assist a person to comply with the law, such as a guidance document.~~
-  (8) ~~"Residence" means domicile Residence. – Domicile or principal place of business.~~
-  (8a) ~~"Rule" means any Rule. – Any agency regulation, standard, or statement of general applicability that implements or interprets an enactment of the General Assembly or Congress or a regulation adopted by a federal agency or that describes the procedure or practice requirements of an agency. The term includes the establishment of a fee and the amendment or repeal of a prior rule. The term does not include the following:~~
- a. Statements concerning only the internal management of an agency or group of agencies within the same principal office or department enumerated in G.S. 143A-11 or 143B-6, including policies and procedures manuals, if the statement does not directly or substantially affect the procedural or substantive rights or duties of a person not employed by the agency or group of agencies.
 -  b. Budgets and budget policies and procedures issued by the Director of the Budget, by the head of a department, as defined by G.S. 143A-2 or G.S. 143B-3, or by an occupational licensing board, as defined by G.S. 93B-1.
 - c. Nonbinding interpretative statements within the delegated authority of an agency that merely define, interpret, or explain the meaning of a statute or rule.
 - d. A form, the contents or substantive requirements of which are prescribed by rule or statute.

- e. Statements of agency policy made in the context of another proceeding, including:
 - 1. Declaratory rulings under G.S. 150B-4.
 - 2. Orders establishing or fixing rates or tariffs.
- f. Requirements, communicated to the public by the use of signs or symbols, concerning the use of public roads, bridges, ferries, buildings, or facilities.
- g. Statements that set forth criteria or guidelines to be used by the staff of an agency in performing audits, investigations, or inspections; in settling financial disputes or negotiating financial arrangements; or in the defense, prosecution, or settlement of cases.
- h. Scientific, architectural, or engineering standards, forms, or procedures, including design criteria and construction standards used to construct or maintain highways, bridges, or ferries.
- i. Job classification standards, job qualifications, and salaries established for positions under the jurisdiction of the State Human Resources Commission.
- j. Establishment of the interest rate that applies to tax assessments under G.S. 105-241.21.
- k. The State Medical Facilities Plan, if the Plan has been prepared with public notice and hearing as provided in G.S. 131E-176(25), reviewed by the Commission for compliance with G.S. 131E-176(25), and approved by the Governor.
- ★ l. Standards adopted by the Department of Information Technology State Chief Information Officer and applied to information technology as defined by G.S. 147-33.81, in G.S. 143B-1320.

→ (8b) Repealed by Session Laws 2011-398, s. 61.2, effective July 25, 2011.

(8c) "Substantial evidence" means relevant Substantial evidence. – Relevant evidence a reasonable mind might accept as adequate to support a conclusion.

(9) Repealed by Session Laws 1991, c. 418, s. 3." (1973, c. 1331, s. 1; 1975, 2nd Sess., c. 983, ss. 61, 62; 1977, c. 915, s. 5; 1983, c. 641, s. 1; 1985, c. 746, s. 1; 1985 (Reg. Sess., 1986), c. 1022, s. 1(2)-1(5); 1987, c. 878, ss. 1, 2, 21; 1987 (Reg. Sess., 1988), c. 1111, s. 17; 1991, c. 418, s. 3; c. 477, ss. 3.1, 3.2, 9; 1995, c. 390, s. 29; 1996, 2nd Ex. Sess., c. 18, s. 7.10(g); 1997-456, s. 27; 2003-229, s. 12; 2007-491, s. 44(1)b; 2011-13, s. 2; 2011-398, ss. 15, 61.2; 2013-188, s. 7; 2013-382, s. 9.1(c); 2013-413, s. 1; 2015-2, s. 2.2(c); 2015-241, ss. 7A.3, 30.16(a); 2017-6, s. 3; 2018-13, s. 3.8(b); 2018-146, s. 4.5(b).)

SECTION #.(c) G.S. 150B-38 reads as rewritten:

"§ 150B-38. Scope; hearing required; notice; venue.

- (a) The provisions of this Article shall apply to:
 - (1) Occupational licensing agencies.
 - (2) The State Banking Commission, the Commissioner of Banks, and the Credit Union Division of the Department of Commerce.
 - (3) The Department of Insurance and the Commissioner of Insurance.

- (4) The State Chief Information Officer in the administration of the provisions of Article 15 of Chapter 143B of the General Statutes.
- (5) The North Carolina State Building Code Council.
- (6) Repealed by Session Laws 2018-146, s. 4.4(b), effective December 27, 2018.

(b) Prior to any agency action in a contested case, the agency shall give the parties in the case an opportunity for a hearing without undue delay and notice not less than 15 days before the hearing. Notice to the parties shall ~~include~~ include all of the following:

- (1) A statement of the date, hour, place, and nature of the ~~hearing~~ hearing.
- (2) A reference to the particular sections of the statutes and rules ~~involved~~ and involved.
- (3) A short and plain statement of the facts alleged.

(c) Notice shall be given by one of the methods for service of process under G.S. 1A-1, Rule 4(j) or Rule 4(j3). If given by registered or certified mail, by signature confirmation as provided by the United States Postal Service, or by designated delivery service authorized pursuant to 26 U.S.C. § 7502(f)(2) with delivery receipt, notice shall be deemed to have been given on the delivery date appearing on the return receipt, copy of proof of delivery provided by the United States Postal Service, or delivery receipt. If notice cannot be given by one of the methods for service of process under G.S. 1A-1, Rule 4(j) or Rule 4(j3), then notice shall be given in the manner provided in G.S. 1A-1, Rule 4(j1).

(d) A party ~~who~~ that has been served with a notice of hearing may file a written response with the agency. If a written response is filed, a copy of the response ~~must~~ shall be mailed to all other parties not less than 10 days before the date set for the hearing.

(e) All hearings conducted under this Article shall be open to the public. A hearing conducted by the agency shall be held in the county where the agency maintains its principal office. A hearing conducted for the agency by an administrative law judge requested under G.S. 150B-40 shall be held in a county in this State where any person whose property or rights are the subject matter of the hearing resides. If a different venue would promote the ends of justice or better serve the convenience of witnesses, the agency or the administrative law judge may designate another county. A person whose property or rights are the subject matter of the hearing waives ~~his~~ an objection to venue ~~if he proceeds by proceeding~~ in the hearing.

(f) Any person may petition to become a party by filing with the agency or hearing officer a motion to intervene in the manner provided by G.S. 1A-1, Rule 24. In addition, any person interested in a contested case under this Article may intervene and participate to the extent deemed appropriate by the agency hearing officer.

(g) When contested cases involving a common question of law or fact or multiple proceedings involving the same or related parties are pending before an agency, the agency may order a joint hearing of any matters at issue in the cases, order the cases consolidated, or make other orders to reduce costs or delay in the proceedings.

(h) Every agency shall adopt rules governing the conduct of hearings that are consistent with the provisions of this Article.

(i) ~~Standards adopted by the State Chief Information Officer and applied to information technology as defined in G.S. 143B-1320.~~ (1985, c. 746, s. 1; 1985 (Reg. Sess., 1986), c. 1022, s. 6(3); 1989, c. 76, s. 30; c. 751, s. 7(45); 1991 (Reg. Sess., 1992), c. 959, s. 76; 1999-434, s. 17; 2001-141, s. 8; 2001-193, s. 12; 2001-487, s. 21(h); 2010-169, s. 7; 2011-332, s. 2.3; 2015-241, ss. 7A.3, 7A.4(ff); 2017-6, s. 3; 2018-146, ss. 3.1(a), (b), 4.4(b).)

SECTION #.(d) G.S. 122C-151.4 reads as rewritten:

"§ 122C-151.4. Appeal to State MH/DD/SA Appeals Panel.

(a) Definitions. – The following definitions apply in this section:

- (1) ~~"Appeals Panel" means the State MH/DD/SA Appeals Panel established under this section.~~
- (1a) ~~"Client" means an Client.~~ – An individual who is admitted to or receiving public services from an area facility. ~~"Client"~~ The term includes the client's personal representative or designee.
- (1b) ~~"Contract" means a Contract.~~ – A contract with an area authority or county program to provide services, other than personal services, to clients and other recipients of services.
- (2) ~~"Contractor" means a Contractor.~~ – A person ~~who~~ that has a contract or ~~who~~ that had a contract during the current fiscal year.
- (3) ~~"Former contractor" means a Former contractor.~~ – A person ~~who~~ that had a contract during the previous fiscal year.
- (4) Panel. – The State MH/DD/SA Appeals Panel established under this section.

(b) Appeals Panel. – The State MH/DD/SA Appeals Panel is established. The Panel shall consist of three members appointed by the Secretary. The Secretary shall determine the qualifications of the Panel members. Panel members serve at the pleasure of the Secretary.

(c) ~~Who Can Persons That May Appeal.~~ – The following persons may appeal to the ~~State MH/DD/SA Appeals Panel~~ after having exhausted the appeals process at the appropriate area authority or county program:

- (1) A contractor or a former contractor ~~who~~ that claims that an area authority or county program is not acting or has not acted within applicable State law or rules in denying the contractor's application for endorsement or in imposing a particular requirement on the contractor on fulfillment of the ~~contract;~~ contract.
- (2) A contractor or a former contractor ~~who~~ that claims that a requirement of the contract substantially compromises the ability of the contractor to fulfill the ~~contract;~~ contract.
- (3) A contractor or former contractor ~~who~~ that claims that an area authority or county program has acted arbitrarily and capriciously in reducing funding for the type of services provided or formerly provided by the contractor or former ~~contractor;~~ contractor.
- (4) A client or a person who was a client in the previous fiscal year, who claims that an area authority or county program has acted arbitrarily and capriciously in reducing funding for the type of services provided or formerly provided to the client directly by the area authority or county ~~program;~~ and program.
- (5) A person ~~who~~ that claims that an area authority or county program did not comply with a State law or a rule adopted by the Secretary or the Commission in developing the plans and budgets of the area authority or county program and that the failure to comply has adversely affected the ability of the person to participate in the development of the plans and budgets.

(d) Hearing. – All members of the ~~State MH/DD/SA Appeals Panel~~ shall hear an appeal to the Panel. An appeal shall be filed with the Panel within the time required by the Secretary and shall be heard by the Panel within the time required by the Secretary. A hearing shall be conducted at the place determined in accordance with the rules adopted by the Secretary. A hearing before

the Panel shall be informal; no sworn testimony shall be taken and the rules of evidence do not apply. The person ~~who~~that appeals to the Panel has the burden of proof. The Panel shall not stay a decision of an area authority during an appeal to the Panel.

(e) ~~Decision.~~ – The ~~State MH/DD/SA Appeals~~ Panel shall make a written decision on each appeal to the Panel within the time set by the Secretary. A decision may direct a contractor, an area authority, or a county program to take an action or to refrain from taking an action, but it shall not require a party to the appeal to pay any amount except payment due under the contract. In making a decision, the Panel shall determine the course of action that best protects or benefits the clients of the area authority or county program. If a party to an appeal fails to comply with a decision of the Panel and the Secretary determines that the failure deprives clients of the area authority or county program of a type of needed service, the Secretary may use funds previously allocated to the area authority or county program to provide the service.

(f) Chapter 150B Appeal. – A person ~~who~~that is dissatisfied with a decision of the Panel may commence a contested case under Article 3 of Chapter 150B of the General Statutes. Notwithstanding ~~G.S. 150B-2(1a), G.S. 150B-2(1b),~~ an area authority or county program is considered an agency for purposes of the limited appeal authorized by this section. If the need to first appeal to the ~~State MH/DD/SA Appeals~~ Panel is waived by the Secretary, a contractor may appeal directly to the Office of Administrative Hearings after having exhausted the appeals process at the appropriate area authority or county program.

(g) Limitation of Applicability. – This section does not apply to LME/MCOs, enrollees, applicants, providers of emergency services, or network providers subject to Chapter 108D of the General Statutes." (1993, c. 321, s. 220(o); 2001-437, s. 1.17(c); 2008-107, s. 10.15A(h); 2011-398, s. 40; 2012-66, s. 3; 2013-397, s. 3.)

SECTION #.(e) G.S. 150B-23 reads as rewritten:

"§ 150B-23. Commencement; assignment of administrative law judge; hearing required; notice; intervention.

(a) A contested case shall be commenced by paying a fee in an amount established in G.S. 150B-23.2 and by filing a petition with the Office of Administrative Hearings and, except as provided in Article 3A of this Chapter, shall be conducted by that Office. The party ~~who~~that files the petition shall serve a copy of the petition on all other parties and, if the dispute concerns a license, the person ~~who~~that holds the license. A party ~~who~~that files a petition shall file a certificate of service together with the petition. A petition shall be signed by a party, an attorney representing a party, or other representative of the party as may specifically be authorized by law, and, if filed by a party other than an agency, shall state facts tending to establish that the agency named as the respondent has deprived the petitioner of property, has ordered the petitioner to pay a fine or civil penalty, or has otherwise substantially prejudiced the petitioner's rights and that the ~~agency;~~ agency did any of the following:

- (1) Exceeded its authority or ~~jurisdiction;~~ jurisdiction.
- (2) Acted ~~erroneously;~~ erroneously.
- (3) Failed to use proper ~~procedure;~~ procedure.
- (4) Acted arbitrarily or ~~capriciously;~~ or capriciously.
- (5) Failed to act as required by law or rule.

The parties in a contested case shall be given an opportunity for a hearing without undue delay. Any person aggrieved may commence a contested case ~~hereunder.~~ under this section.

A local government employee, applicant for employment, or former employee to whom Chapter 126 of the General Statutes applies may commence a contested case under this Article in the same manner as any other petitioner. The case shall be conducted in the same manner as other contested cases under this Article.

A business entity may represent itself using a nonattorney representative who is one or more of the following of the business entity: (i) officer, (ii) manager or member-manager, if the business entity is a limited liability company, (iii) employee whose income is reported on IRS Form W-2, if the business entity authorizes the representation in writing, or (iv) owner of the business entity, if the business entity authorizes the representation in writing and if the owner's interest in the business entity is at least twenty-five percent (25%). Authority for and prior notice of nonattorney representation shall be made in writing, under penalty of perjury, to the Office on a form provided by the Office.

(a1) Repealed by Session Laws 1985 (Regular Session, 1986), c. 1022, s. 1(9).

(a2) An administrative law judge assigned to a contested case may require a party to the case to file a prehearing statement. A party's prehearing statement ~~must~~ shall be served on all other parties to the contested case.

(a3) A Medicaid or NC Health Choice enrollee, or the enrollee's authorized representative, who appeals a notice of resolution issued by a managed care entity under Chapter 108D of the General Statutes may commence a contested case under this Article in the same manner as any other petitioner. The case shall be conducted in the same manner as other contested cases initiated by Medicaid or NC Health Choice enrollees under this Article. Solely and only for the purposes of contested cases commenced pursuant to G.S. 108D-15 by enrollees of LME/MCOs to appeal a notice of resolution issued by the LME/MCO, an LME/MCO is considered an agency as defined in ~~G.S. 150B-2(1a)~~. G.S. 150B-2. The LME/MCO ~~shall not be~~ is not considered an agency for any other purpose. When a prepaid health plan, as defined in G.S. 108D-1, other than an LME/MCO, is under contract with the Department of Health and Human Services to issue notices of resolution under Article 2 of Chapter 108D of the General Statutes, then solely and only for the purposes of contested cases commenced pursuant to G.S. 108D-15 to appeal a notice of resolution issued by the prepaid health plan, the prepaid health plan ~~shall be~~ is considered an agency as defined in ~~G.S. 150B-2(1a)~~. G.S. 150B-2. The prepaid health plan ~~shall not be~~ is not considered an agency for any other purpose.

(a4) If an agency fails to take any required action within the time period specified by law, any person whose rights are substantially prejudiced by the agency's failure to act may commence a contested case in accordance with this section seeking an order that the agency act as required by law. If the administrative law judge finds that the agency has failed to act as required by law, the administrative law judge may order that the agency take the required action within a specified time period.

(a5) A county that appeals a decision of the Department of Health and Human Services to temporarily assume Medicaid eligibility administration in accordance with G.S. 108A-70.42 or G.S. 108A-70.50 may commence a contested case under this Article in the same manner as any other petitioner. The case shall be conducted in the same manner as other contested cases under this Article.

(b) The parties to a contested case shall be given a notice of hearing not less than 15 days before the hearing by the Office of Administrative Hearings. If prehearing statements have been filed in the case, the notice shall state the date, hour, and place of the hearing. If prehearing statements have not been filed in the case, the notice shall state the date, hour, place, and nature of

the hearing, shall list the particular sections of the statutes and rules involved, and shall give a short and plain statement of the factual allegations.

(c) Notice shall be given by one of the methods for service of process under G.S. 1A-1, Rule 4(j) or Rule 4(j3). If given by registered or certified mail, by signature confirmation as provided by the United States Postal Service, or by designated delivery service authorized pursuant to 26 U.S.C. § 7502(f)(2) with delivery receipt, notice ~~shall be~~ is deemed to have been given on the delivery date appearing on the return receipt, copy of the proof of delivery provided by the United States Postal Service, or delivery receipt. If giving of notice cannot be accomplished by a method under G.S. 1A-1, Rule 4(j) or Rule 4(j3), notice shall then be given in the manner provided in G.S. 1A-1, Rule 4(j1).

(d) Any person may petition to become a party by filing a motion to intervene in the manner provided in G.S. 1A-1, Rule 24. In addition, any person interested in a contested case may intervene and participate in that proceeding to the extent deemed appropriate by the administrative law judge.

(e) All hearings under this Chapter shall be open to the public. Hearings shall be conducted in an impartial manner. Hearings shall be conducted according to the procedures set out in this Article, except to the extent and in the particulars that specific hearing procedures and time standards are governed by another statute.

(f) Unless another statute or a federal statute or regulation sets a time limitation for the filing of a petition in contested cases against a specified agency, the general limitation for the filing of a petition in a contested case is 60 days. The time limitation, whether established by another statute, federal statute, or federal regulation, or this section, ~~shall commence~~ commences when notice is given of the agency decision to all persons aggrieved ~~who that~~ are known to the agency by personal delivery, electronic delivery, or by the placing of the notice in an official depository of the United States Postal Service wrapped in a wrapper addressed to the person at the latest address given by the person to the agency. The notice shall be in writing, ~~and~~ shall set forth the agency action, and shall inform the persons of the right, the procedure, and the time limit to file a contested case petition. When no informal settlement request has been received by the agency prior to issuance of the notice, any subsequent informal settlement request shall not suspend the time limitation for the filing of a petition for a contested case hearing. When the Chief Justice of the North Carolina Supreme Court determines and declares that catastrophic conditions exist or have existed in one or more counties of the State and issues an order pursuant to G.S. 7A-39(b), the chief administrative law judge may by order entered pursuant to this subsection extend, to a date certain no fewer than 10 days after the effective date of the order, the time or period of limitation, whether established by another statute or this section, for the filing of a petition for a contested case. The order shall be in writing and ~~shall become~~ becomes effective for each affected county upon the date set forth in the order, and if no date is set forth in the order, then upon the date the order is signed by the chief administrative law judge. The order shall provide that it ~~shall expire~~ expires upon the expiration of the Chief Justice's order.

(g) Where multiple licenses are required from an agency for a single activity, the Secretary or chief administrative officer of the agency may issue a written determination that the administrative decision reviewable under Article 3 of this Chapter occurs on the date the last license for the activity is issued, denied, or otherwise disposed of. The written determination of the administrative decision is not reviewable under this Article. Any licenses issued for the activity prior to the date of the last license identified in the written determination are not reviewable under this Article until the last license for the activity is issued, denied, or otherwise disposed of. A

contested case challenging the last license decision for the activity may include challenges to agency decisions on any of the previous licenses required for the activity." (1973, c. 1331, s. 1; 1975, 2nd Sess., c. 983, s. 65; 1985, c. 746, s. 1; 1985 (Reg. Sess., 1986), c. 1022, ss. 1(9), (10), 6(2), (3); 1987, c. 878, ss. 3-5; c. 879, s. 6.1; 1987 (Reg. Sess., 1988), c. 1111, s. 5; 1991, c. 35, s. 1; 1993 (Reg. Sess., 1994), c. 572, s. 2; 2009-451, s. 21A.1(a); 2011-332, s. 2.1; 2011-398, s. 16; 2012-187, s. 6; 2013-397, s. 4; 2014-120, ss. 7(a), 48, 59(a); 2016-94, s. 12H.17(c); 2017-57, s. 11H.22(d); 2018-114, s. 1; 2019-81, s. 11; 2020-3, s. 4.26(a).)

Explanation: In addition to making other clean-up changes, this proposed technical correction does the following:

- Amends G.S. 150B-2 and G.S. 150B-38 to conform to the organization of the Department of Information Technology. Part VII-A of S.L. 2015-241 established the Department of Information Technology, repealed Article 3D of Chapter 147 of the General Statutes, and enacted Article 14 of Chapter 143B of the General Statutes, beginning with a definitions section in G.S. 143B-1300. The Revisor of Statutes renumbered this article as Article 15 of Chapter 143B, beginning with G.S. 143B-1320. Section 7A.4(ff) of the session law added a new subsection (i) to G.S. 150B-38 that does not fit with the rest of that section. It appears that this language is intended to be set out in G.S. 150B-2(8a)l., which contains an obsolete reference to G.S. 147-33.81. This proposed technical correction amends G.S. 150B-2(8a)l. to match the language set out in G.S. 150B-38(i) and repeals G.S. 150B-38(i).
- Adds back the word "or" to the list in G.S. 150B-2(8a)b. S.L. 2018-146, s. 4.5(b), deleted this word when it deleted the ultimate item in the list but did not add the word back.
- Re-letters certain definitions in G.S. 150B-2 to achieve alphabetical order.
- Amends G.S. 122C-151.4 and G.S. 150B-23 to conform to the re-lettering of certain definitions in G.S. 150B-2 and makes other clean-up changes in those sections.

Background information:

§ 143B-1320. Definitions; scope; exemptions.

- (a) Definitions. – The following definitions apply in this Article:
- (1) CGIA. – Center for Geographic Information and Analysis.
 - (2) CJIN. – Criminal Justice Information Network.
 - (3) Community of practice. – A collaboration of organizations with similar requirements, responsibilities, or interests.
 - (4) Cooperative purchasing agreement. – An agreement between a vendor and one or more states or state agencies providing that the parties may collaboratively or collectively purchase information technology goods and services in order to increase economies of scale and reduce costs.
 - (4a) Cybersecurity incident. – An occurrence that:
 - a. Actually or imminently jeopardizes, without lawful authority, the integrity, confidentiality, or availability of information or an information system; or

- b. Constitutes a violation or imminent threat of violation of law, security policies, privacy policies, security procedures, or acceptable use policies.
- (5) Department. – The Department of Information Technology.
- (6) Distributed information technology assets. – Hardware, software, and communications equipment not classified as traditional mainframe-based items, including personal computers, local area networks, servers, mobile computers, peripheral equipment, and other related hardware and software items.
- (7) Enterprise solution. – An information technology solution that can be used by multiple agencies.
- (8) Exempt agencies. – An entity designated as exempt in subsection (b) of this section.
- (9) GDAC. – Government Data Analytics Center.
- (10) GICC. – North Carolina Geographic Information Coordinating Council.
- (11) Information technology or IT. – Set of tools, processes, and methodologies, including, but not limited to, coding and programming; data communications, data conversion, and data analysis; architecture; planning; storage and retrieval; systems analysis and design; systems control; mobile applications; and equipment and services employed to collect, process, and present information to support the operation of an organization. The term also includes office automation, multimedia, telecommunications, and any personnel and support personnel required for planning and operations.
- (12) Recodified as subdivision (a)(4a) at the direction of the Revisor of Statutes.
- (13) Local government entity. – A local political subdivision of the State, including a city, a county, a local school administrative unit as defined in G.S. 115C-5, or a community college.
- (14) Participating agency. – Any agency that has transferred its information technology personnel, operations, projects, assets, and funding to the Department of Information Technology. The State CIO shall be responsible for providing all required information technology support to participating agencies.
- (15) Recodified as subdivision (a)(16a) at the direction of the Revisor of Statutes.
- (16) Separate agency. – Any agency that has maintained responsibility for its information technology personnel, operations, projects, assets, and funding. The agency head shall work with the State CIO to ensure that the agency has all required information technology support.
- (16a) Significant cybersecurity incident. – A cybersecurity incident that is likely to result in demonstrable harm to the State's security interests, economy, critical infrastructure, or to the public confidence, civil liberties, or public health and safety of the residents of North Carolina. A significant cybersecurity incident is determined by the following factors:
 - a. Incidents that meet thresholds identified by the Department jointly with the Department of Public Safety that involve information:
 - 1. That is not releasable to the public and that is restricted or highly restricted according to Statewide Data Classification and Handling Policy; or

2. That involves the exfiltration, modification, deletion, or unauthorized access, or lack of availability to information or systems within certain parameters to include (i) a specific threshold of number of records or users affected as defined in G.S. 75-65 or (ii) any additional data types with required security controls.
- b. Incidents that involve information that is not recoverable or cannot be recovered within defined time lines required to meet operational commitments defined jointly by the State agency and the Department or can be recovered only through additional measures and has a high or medium functional impact to the mission of an agency.
- (17) State agency or agency. – Any agency, department, institution, commission, committee, board, division, bureau, office, unit, officer, or official of the State. The term does not include the legislative or judicial branches of government or The University of North Carolina.
- (18) State Chief Information Officer or State CIO. – The head of the Department, who is a Governor's cabinet level officer.
- (19) State CIO approved data center. – A data center designated by the State CIO for State agency use that meets operational standards established by the Department.

(b) Exemptions. – Except as otherwise specifically provided by law, the provisions of this Chapter do not apply to the following entities: the General Assembly, the Judicial Department, and The University of North Carolina and its constituent institutions. These entities may elect to participate in the information technology programs, services, or contracts offered by the Department, including information technology procurement, in accordance with the statutes, policies, and rules of the Department. The election must be made in writing, as follows:

- (1) For the General Assembly, by the Legislative Services Commission.
- (2) For the Judicial Department, by the Chief Justice.
- (3) For The University of North Carolina, by the Board of Governors.
- (4) For the constituent institutions of The University of North Carolina, by the respective boards of trustees.

(c) Deviations. – Any State agency may apply in writing to the State Chief Information Officer for approval to deviate from the provisions of this Chapter. If granted by the State Chief Information Officer, any deviation shall be consistent with available appropriations and shall be subject to such terms and conditions as may be specified by the State CIO.

(d) Review. – Notwithstanding subsection (b) of this section, any State agency shall review and evaluate any deviation authorized and shall, in consultation with the Department of Information Technology, adopt a plan to phase out any deviations that the State CIO determines to be unnecessary in carrying out functions and responsibilities unique to the agency having a deviation. The plan adopted by the agency shall include a strategy to coordinate its general information processing functions with the Department of Information Technology in the manner prescribed by this act and provide for its compliance with policies, procedures, and guidelines adopted by the Department of Information Technology. Any agency receiving a deviation shall submit its plan to the Office of State Budget and Management as directed by the State Chief Information Officer. (2015-241, s. 7A.2(b); 2019-200, s. 6(d).)

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2015**

**SESSION LAW 2015-241
HOUSE BILL 97**

AN ACT TO MAKE BASE BUDGET APPROPRIATIONS FOR CURRENT OPERATIONS OF
STATE DEPARTMENTS, INSTITUTIONS, AND AGENCIES, AND FOR OTHER
PURPOSES.

The General Assembly of North Carolina enacts:

...
PART VII-A. ESTABLISH DEPARTMENT OF INFORMATION TECHNOLOGY

ESTABLISH DEPARTMENT OF INFORMATION TECHNOLOGY

SECTION 7A.1.(a) The Department of Information Technology is established in this Part as a single, unified cabinet-level department that consolidates information technology functions, powers, duties, obligations, and services existing within the principal departments. Notwithstanding G.S. 143B-9 and G.S. 143B-10, and except as otherwise provided in this act, all information technology functions, powers, duties, obligations, and services vested in the State entities listed in G.S. 143B-6 are transferred to, vested in, and consolidated within the Department of Information Technology. The head of the Department of Information Technology is the State Chief Information Officer, who shall be known as the State CIO. The powers and duties of the deputy chief information officers, directors, and divisions of the Department shall be subject to the direction and control of the State CIO. Upon the establishment of the Department of Information Technology, the Governor shall appoint a State CIO in accordance with G.S. 143B-9.

SECTION 7A.1.(b) The following transfers from the Office of Information Technology Services are made to the Department of Information Technology created by this act:

- (1) A Type I transfer, as defined in G.S. 143A-6, of the:
 - a. Office of the State Chief Information Officer.
 - b. Office of Information Technology Services.
- (2) A Type II transfer, as defined in G.S. 143A-6, of the:
 - a. 911 Board.
 - b. Criminal Justice Information Network.
 - c. Government Data Analytics Center.
 - d. North Carolina Geographic Information Coordinating Council and the Center for Geographic Information and Analysis.

SECTION 7A.1.(c) G.S. 143B-2 reads as rewritten:

"§ 143B-2. Interim applicability of the Executive Organization Act of 1973.

The Executive Organization Act of 1973 shall be applicable only to the following named departments:

- ...
(11) Department of Information Technology."

SECTION 7A.1.(d) G.S. 143B-6 reads as rewritten:

"§ 143B-6. Principal departments.

In addition to the principal departments enumerated in the Executive Organization Act of 1971, all executive and administrative powers, duties, and functions not including those of the General Assembly and its agencies, the General Court of Justice and the administrative agencies created pursuant to Article IV of the Constitution of North Carolina, and higher education previously vested by law in the several State agencies, are vested in the following principal departments:

- ...
(12) Department of Information Technology."

STATUTORY CHANGES CREATING THE DEPARTMENT OF INFORMATION TECHNOLOGY

SECTION 7A.2.(a) Article 3D of Chapter 147 of the General Statutes is repealed.

SECTION 7A.2.(b) Chapter 143B of the General Statutes is amended by adding a new Article to read:

"Article 14.

"Department of Information Technology.

"Part 1. General Provisions.

"§ 143B-1300. Definitions; scope; exemptions.

(a) Definitions. – The following definitions apply in this Article:

- (1) CGIA. – Center for Geographic Information and Analysis.
- (2) CJIN. – Criminal Justice Information Network.
- (3) Community of practice. – A collaboration of organizations with similar requirements, responsibilities, or interests.
- (4) Cooperative purchasing agreement. – An agreement between a vendor and one or more states or state agencies providing that the parties may collaboratively or collectively purchase information technology goods and services in order to increase economies of scale and reduce costs.
- (5) Department. – The Department of Information Technology.
- (6) Distributed information technology assets. – Hardware, software, and communications equipment not classified as traditional mainframe-based items, including personal computers, local area networks, servers, mobile computers, peripheral equipment, and other related hardware and software items.
- (7) Enterprise solution. – An information technology solution that can be used by multiple agencies.
- (8) Exempt agencies. – An entity designated as exempt in subsection (b) of this section.
- (9) GDAC. – Government Data Analytics Center.
- (10) GICC. – North Carolina Geographic Information Coordinating Council.
- (11) Information technology or IT. – Set of tools, processes, and methodologies, including, but not limited to, coding and programming; data communications, data conversion, and data analysis; architecture; planning; storage and retrieval; systems analysis and design; systems control; mobile applications; and equipment and services employed to collect, process, and present information to support the operation of an organization. The term also includes office automation, multimedia, telecommunications, and any personnel and support personnel required for planning and operations.
- (12) Information technology security incident. – A computer-, network-, or paper-based activity that results directly or indirectly in misuse, damage, denial of service, compromise of integrity, or loss of confidentiality of a network, computer, application, or data.
- (13) Local government entity. – A local political subdivision of the State, including a city, a county, a local school administrative unit as defined in G.S. 115C-5, or a community college.
- (14) Participating agency. – Any agency that has transferred its information technology personnel, operations, projects, assets, and funding to the Department of Information Technology. The State CIO shall be responsible for providing all required information technology support to participating agencies.
- (15) Security incident. – A warning or indication of a threat to or breach of information or computer security. The term also includes threats that have already occurred.
- (16) Separate agency. – Any agency that has maintained responsibility for its information technology personnel, operations, projects, assets, and funding.

The agency head shall work with the State CIO to ensure that the agency has all required information technology support.

- (17) State agency or agency. – Any agency, department, institution, commission, committee, board, division, bureau, office, unit, officer, or official of the State. The term does not include the legislative or judicial branches of government or The University of North Carolina.
- (18) State Chief Information Officer or State CIO. – The head of the Department, who is a Governor's cabinet level officer.
- (19) State CIO approved data center. – A data center designated by the State CIO for State agency use that meets operational standards established by the Department.

(b) Exemptions. – Except as otherwise specifically provided by law, the provisions of this Chapter do not apply to the following entities: the General Assembly, the Judicial Department, and The University of North Carolina and its constituent institutions. These entities may elect to participate in the information technology programs, services, or contracts offered by the Department, including information technology procurement, in accordance with the statutes, policies, and rules of the Department. The election must be made in writing, as follows:

- (1) For the General Assembly, by the Legislative Services Commission.
- (2) For the Judicial Department, by the Chief Justice.
- (3) For The University of North Carolina, by the Board of Governors.
- (4) For the constituent institutions of The University of North Carolina, by the respective boards of trustees.

(c) Deviations. – Any State agency may apply in writing to the State Chief Information Officer for approval to deviate from the provisions of this Chapter. If granted by the State Chief Information Officer, any deviation shall be consistent with available appropriations and shall be subject to such terms and conditions as may be specified by the State CIO.

(d) Review. – Notwithstanding subsection (b) of this section, any State agency shall review and evaluate any deviation authorized and shall, in consultation with the Department of Information Technology, adopt a plan to phase out any deviations that the State CIO determines to be unnecessary in carrying out functions and responsibilities unique to the agency having a deviation. The plan adopted by the agency shall include a strategy to coordinate its general information processing functions with the Department of Information Technology in the manner prescribed by this act and provide for its compliance with policies, procedures, and guidelines adopted by the Department of Information Technology. Any agency receiving a deviation shall submit its plan to the Office of State Budget and Management as directed by the State Chief Information Officer.

...

SECTION 7A.4.(ff) G.S. 150B-38 is amended by adding a new subsection to read:

"(i) Standards adopted by the State Chief Information Officer and applied to information technology as defined in G.S. 143B-1300."

...

DIT EFFECTIVE DATE

SECTION 7A.6 Except as otherwise provided, this Part is effective when this act becomes law.

...

EFFECTIVE DATE

SECTION 33.7. Except as otherwise provided, this act becomes effective July 1, 2015.

In the General Assembly read three times and ratified this the 18th day of September, 2015.

s/ Tom Apodaca
Presiding Officer of the Senate

s/ Tim Moore
Speaker of the House of Representatives

s/ Pat McCrory
Governor

Approved 9:35 a.m. this 18th day of September, 2015

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2017
SESSION LAW 2018-146
HOUSE BILL 1029

AN ACT TO REQUIRE A PRIMARY IF A NEW ELECTION IS ORDERED IN ANY ELECTION CONTEST; TO RETURN THE ADMINISTRATIVE STRUCTURE OF ELECTIONS, ETHICS, AND LOBBYING TO THE 2016 STRUCTURE; AND TO MAKE OTHER CHANGES TO THE ELECTIONS, ETHICS, AND LOBBYING LAWS.

The General Assembly of North Carolina enacts:

...

SECTION 4.5.(b) G.S. 150B-2(8a) reads as rewritten:

"(8a) "Rule" means any agency regulation, standard, or statement of general applicability that implements or interprets an enactment of the General Assembly or Congress or a regulation adopted by a federal agency or that describes the procedure or practice requirements of an agency. The term includes the establishment of a fee and the amendment or repeal of a prior rule. The term does not include the following:

- a. Statements concerning only the internal management of an agency or group of agencies within the same principal office or department enumerated in G.S. 143A-11 or 143B-6, including policies and procedures manuals, if the statement does not directly or substantially affect the procedural or substantive rights or duties of a person not employed by the agency or group of agencies.
- b. Budgets and budget policies and procedures issued by the Director of the Budget, by the head of a department, as defined by G.S. 143A-2 or G.S. 143B-3, by an occupational licensing board, as defined by G.S. 93B-1, or by the Bipartisan State Board of Elections and Ethics Enforcement. G.S. 93B-1.
- c. Nonbinding interpretative statements within the delegated authority of an agency that merely define, interpret, or explain the meaning of a statute or rule.



- d. A form, the contents or substantive requirements of which are prescribed by rule or statute.
- e. Statements of agency policy made in the context of another proceeding, including:
 - 1. Declaratory rulings under G.S. 150B-4.
 - 2. Orders establishing or fixing rates or tariffs.
- f. Requirements, communicated to the public by the use of signs or symbols, concerning the use of public roads, bridges, ferries, buildings, or facilities.
- g. Statements that set forth criteria or guidelines to be used by the staff of an agency in performing audits, investigations, or inspections; in settling financial disputes or negotiating financial arrangements; or in the defense, prosecution, or settlement of cases.
- h. Scientific, architectural, or engineering standards, forms, or procedures, including design criteria and construction standards used to construct or maintain highways, bridges, or ferries.
- i. Job classification standards, job qualifications, and salaries established for positions under the jurisdiction of the State Human Resources Commission.
- j. Establishment of the interest rate that applies to tax assessments under G.S. 105-241.21.
- k. The State Medical Facilities Plan, if the Plan has been prepared with public notice and hearing as provided in G.S. 131E-176(25), reviewed by the Commission for compliance with G.S. 131E-176(25), and approved by the Governor.
- l. Standards adopted by the Department of Information Technology applied to information technology as defined by G.S. 147-33.81."

...

SECTION 6.3. Except as otherwise provided, this act is effective when it becomes law.
In the General Assembly read three times and ratified this the 12th day of December, 2018.

s/ Philip E. Berger
President Pro Tempore of the Senate

s/ Tim Moore
Speaker of the House of Representatives

VETO Roy Cooper
Governor

Became law notwithstanding the objections of the Governor at 3:38 p.m. this 27th day of December, 2018.

s/ Sarah Lang Holland
Senate Principal Clerk